

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	10/617,962	EAST, PETER DAVID	
	Examiner Anne R. Kubelik	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to \_\_\_\_\_.
2.  The allowed claim(s) is/are 18-22.
3.  The drawings filed on 14 July 2003 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. 09/463,048.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other search results

***Examiner's Amendment***

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Judith Toffenetti on 6 June 2005.

**IN THE CLAIMS:**

In claim 19, line 2, "a" was replaced with --the--.

**IN THE ABSTRACT:**

The invention relates to the identification and isolation of a polynucleotide molecule[s] encoding a new class of protein insecticidal toxin[s] ~~which are~~ produced by the bacteria ~~from the genera~~ Xenorhabdus and Photorhabdus luminescens. The polynucleotide molecule[s] may be incorporated into, for example, insect-specific viruses (including entomopox and nuclear polyhedrosis viruses), bacteria (including Gracilicutes, Firmicutes, Tenericutes and Mendosicutes), protozoa, yeast and plants for control of pest insects.

**IN THE TITLE:**

A TOXIN GENE[S] FROM THE BACTERIA XENORHABDUS NEMATOPHILUS AND PHOTORHABDUS LUMINESCENS

IN THE SPECIFICATION:

*Insert the following before the first paragraph:*

This application is a continuation application of co-pending application Serial No. 09/463,048, now US Patent 6,630,619, issued 7 October 2003, which is the national phase application under U.S.C. §371 of PCT International Application No. PCT/AU98/00562 which has the International filing date of 17 July 1998, which designated the United States of America and which claims priority to Application No. PO 8088 filed in Australia on 17 July 1997.

***Examiner's Statement Of Reasons For Allowance***

2. The following is an examiner's statement of reasons for allowance: Claims 18-22 are free of the prior art, given the failure of the prior art to teach or suggest an isolated nucleic acid of SEQ ID NO:2. The closest prior art is taught by Smigielski et al (US Patent 5,972,687, 102(e) date 5 April 1996), who teach an isolated nucleic acids with 85.4%, 79.1% and 72.1% identity to SEQ ID NO:2 (see sequence search results).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. The central fax number for official correspondence is (571) 273-8300.

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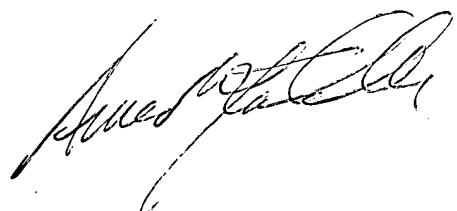
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Anne R. Kubelik, Ph.D.

June 6, 2005



ANNE KUBELIK, PH.D.  
PRIMARY EXAMINER